

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 28, 2005

AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1665

Introduced by Assembly Member Laird

February 22, 2005

An act to ~~add Section 1867 to the Code of Civil Procedure, to add Chapter 12 (commencing with Section 10109) to Part 1 of Division 2 of the Insurance Code, to amend Section 8521 of, and to add Sections 8523, 8612, and 8613 to add Sections 8327, 8523, and 8524 to, and to add Chapter 9 (commencing with Section 9100) to Article 8 (commencing with Section 8725) to Chapter 3 of, to add Chapter 9 (commencing with Section 9110) to, and to add Chapter 10 (commencing with Section 9150) to, Part 4 of Division 5 of, the Water Code, relating to flood control.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1665, as amended, Laird. Flooding.

~~(1) Existing law provides for the payment of compensation for the taking of land in an action by the owner in inverse condemnation.~~

~~This bill would require a court, in cases involving allegations of inverse condemnation as a result of flooding, to determine whether there was an unreasonable plan or policy adopted by a public agency that resulted in flood damage to the plaintiff, based on the consideration of specified factors.~~

~~(2) Existing law prohibits a policy of residential property insurance from being issued or delivered unless the named insured is offered coverage for loss or damage caused by the peril of earthquake.~~

~~This bill would prohibit a policy of residential or commercial property insurance for any residential or commercial property located in a levee inundation zone from being issued or delivered or, with respect to policies in effect on January 1, 2006, from being renewed by any insurer unless the named insured is offered coverage for loss or damage by the peril of flooding under the federal National Flood Insurance Act of 1968.~~

~~(3)~~

~~(1) Existing law establishes the 7-member Reclamation Board in the Department of Water Resources (department) department. Existing law authorizes the Reclamation Board to engage in various flood control activities along the Sacramento River, San Joaquin River, their tributaries, and related areas. Existing law requires the Reclamation Board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.~~

~~This bill would rename the Reclamation Board the Central Valley Flood Control Management Board and would require that board to take steps to ensure improved safety of levees in the Central Valley. The bill would authorize the board to create an environmental mitigation and enhancement bank for work on project levees, as defined, if the board determines it would likely be more cost-effective or environmentally beneficial than developing mitigation on a project-by-project basis. The bill would require the board to cooperate with state, federal, and local agencies to develop and maintain procedures to reduce or eliminate economic waste and to increase the efficient use of public and private funds in securing environmental permits required for work on project levees. The bill would require the department to prepare, on or and submit to the Legislature, before January 1, 2010, an update of the existing plan of flood control, as prescribed, and transmit the updated plan to local agencies, cities, and counties located in the affected watersheds a report describing the state plan of flood control. The bill would require the department, on or before January 1, 2007, to annually prepare a plan and schedule for mapping and remapping selected flood plains and areas located in the Central Valley areas at risk of flooding in the Sacramento and San Joaquin Rivers drainage.~~

~~The bill would require a local agency that has flood water planning and protection duties or responsibilities for project levees to prepare a flood water management plan or update an existing plan on or before January 1, 2008, and every 2 years thereafter, and to file a copy of its plan with specified entities responsible for the operation and maintenance of project works, on or before September 30 of each year, to prepare and submit to the board, in a format specified by the board, a report of information for inclusion in periodic flood management reports relating to the project, thereby imposing a state-mandated local program. The bill would require the board, upon receipt of a local agency plan, to prepare a written notice of flood hazard, as prescribed, and submit the notice to the county assessor. The bill would require any county that includes a project levee failure inundation zone, as defined, to include identify each parcel of real property located in such a zone and to provide a written notice of flood hazard prepared by the board with the annual property tax assessment of each landowner determined by the board county to be own a parcel of real property located in the inundation zone of a project a levee failure inundation zone, thereby imposing a state-mandated local program.~~

The bill would require the department, in cooperation with the board, before January 1, 2011, to prepare a flood control system status report, as prescribed. The bill would require the board to prepare a report on flood management for each local agency responsible for the operation and maintenance of a federal flood control facility of the facilities of the state plan of flood control, to be made available on the board's Internet Web site and provided to specified entities. The bill would require the board to prepare, update, and maintain levee failure inundation zone maps.

(3)

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) One of the first plans for flood control in the Central*
4 *Valley adopted by the Legislature was based on the August 10,*
5 *1910, report of the California Debris Commission. State*
6 *adoption of this report followed the efforts of local landowners*
7 *and agencies to control portions of the areas of potential*
8 *flooding with no general oversight and without appreciable*
9 *success. The report envisioned standardization of levee heights*
10 *and construction of a system of weirs and bypasses to relieve*
11 *stress on the river levees. The state plan that has developed in the*
12 *ensuing years incorporated many existing local levees into the*
13 *system. The system of levees has improved navigation on state*
14 *waterways, reclaimed lands subject to inundation to permit their*
15 *development for agricultural purposes, and reduced the*
16 *frequency of flooding of certain urban centers that existed at the*
17 *time.*

18 *(b) Subsequent legislative acts have amended and added to the*
19 *flood control system described in the Debris Commission report*
20 *under the State Water Resources Law of 1945 (Chapter 1*
21 *(commencing with Section 12570) and Chapter 2 (commencing*
22 *with Section 12639) of Part 6 of Division 6 of the Water Code).*

23 *(c) Under the Federal Flood Control Act of 1944 (Public Law*
24 *78-534), the federal government was generally responsible for*
25 *designing and constructing channel improvements and*
26 *rectification. The state acted as the nonfederal sponsor under*
27 *federal law, was responsible for providing the necessary lands,*
28 *easements, and rights-of-way for the project, and provided*
29 *indemnification to the federal government. Local government*
30 *agencies maintained and operated the finished works to federal*
31 *standards. As specified in Section 12642 of the Water Code, in*
32 *all cases where the federal government does not maintain and*
33 *operate projects, it is the responsibility and duty of the county,*
34 *city, state agency, or public district affected to maintain and*
35 *operate flood control and other works, constructed pursuant to*
36 *Chapter 1 (commencing with Section 12570) and Chapter 2*
37 *(commencing with Section 12639) of Part 6 of Division 6 of the*
38 *Water Code after their completion and hold and save the state*

1 *and the United States free from damages. The state has limited*
 2 *maintenance responsibilities for specified system structures and*
 3 *flood channels under Section 8361 of the Water Code. Since*
 4 *1986, federal law has required a nonfederal monetary*
 5 *contribution for the costs of construction. Since 1988, state law*
 6 *has required local cost-sharing with the state on nonfederal*
 7 *construction costs. Maintenance and hold harmless obligations*
 8 *have not changed.*

9 *(d) The Legislature recognizes that by their nature, levees,*
 10 *which are earthen embankments typically founded on fluvial*
 11 *deposits, cannot offer complete protection from flooding, but can*
 12 *decrease its frequency.*

13 *(e) The Legislature recognizes that the level of flood*
 14 *protection afforded agricultural lands by the original flood*
 15 *control system is not considered adequate to protect those lands*
 16 *when developed for urban uses, and that a dichotomous system of*
 17 *flood protection for urban and agricultural lands has developed*
 18 *through many years of practice. The Legislature further*
 19 *recognizes that levees built to reclaim and protect agricultural*
 20 *land may be inadequate to protect urban development unless*
 21 *those levees are significantly improved.*

22 *(f) Floodplain management tools such as floodplain mapping,*
 23 *the national flood insurance program, and the designated*
 24 *floodway program, represent important supplemental activities*
 25 *to educate the public about and protect the public from flood*
 26 *hazards.*

27 *(g) The unification of assorted local flood protection levees*
 28 *and works into a coherent system under the regulatory control of*
 29 *the Central Valley Flood Management Board is a reasonable*
 30 *plan of flood control, even though levee failures sometimes*
 31 *occur. The plan has provided substantial flood control and*
 32 *economic benefits over many decades that greatly exceed the*
 33 *cumulative economic losses due to floods. In many instances, the*
 34 *economic losses that have been sustained due to flooding could*
 35 *have been significantly mitigated or offset through the voluntary*
 36 *purchase of flood insurance or local efforts to increase the level*
 37 *of flood protection provided by their levees.*

38 *SEC. 2. Section 8327 is added to the Water Code, to read:*

39 *8327. On or before January 1, 2007, the department shall*
 40 *prepare a schedule for mapping areas at risk of flooding in the*

1 *Sacramento and San Joaquin Rivers drainage. The department*
2 *shall update the schedule annually and shall include the status of*
3 *mapping projects in progress and an estimated time of*
4 *completion. The schedule should be based on the present and*
5 *expected future risk of flooding and associated consequences.*
6 *Mapping should include, at a minimum, floodplain mapping,*
7 *floodway mapping, and remapping.*

8 *SEC. 3. Section 8521 of the Water Code is amended to read:*

9 *8521. "Board" means the ~~Reclamation Board~~ Central Valley*
10 *Flood Management Board. Any reference to the Reclamation*
11 *Board in this code means the Central Valley Flood Management*
12 *Board.*

13 *SEC. 4. Section 8523 is added to the Water Code, to read:*

14 *8523. "Facilities of the state plan of flood control" means the*
15 *collective federal and state authorized flood control facilities and*
16 *projects located in the Sacramento and San Joaquin Rivers*
17 *drainage for which the board or the department has given the*
18 *nonfederal assurances to the United States required for the*
19 *project, and those facilities identified in Section 8361.*

20 *SEC. 5. Section 8524 is added to the Water Code, to read:*

21 *8524. "Federal levee" means any levee that is part of a*
22 *federal and state authorized flood control project located in the*
23 *Sacramento and San Joaquin Rivers drainage for which the*
24 *board or the department has given the nonfederal assurances to*
25 *the United States required for the project.*

26 *SEC. 6. Article 8 (commencing with Section 8725) is added to*
27 *Chapter 3 of Part 4 of Division 5 of the Water Code, to read:*

28
29 *Article 8. State Flood Control Plan*
30

31 *8725. Before January 1, 2010, the department, in cooperation*
32 *with the board, shall prepare and submit to the Legislature a*
33 *report describing the state plan of flood control. The report shall*
34 *contain a detailed description and inventory of the flood control*
35 *system using available information that includes all of the*
36 *following:*

37 *(a) A description of the historical development of the flood*
38 *control system.*

39 *(b) An inventory and description of all facilities of the state*
40 *plan of flood control, including information on the original*

1 *purpose, foundation investigations, and design and construction*
2 *of the project.*

3 *(c) The identification of maintaining agencies for specific*
4 *facilities.*

5 *(d) A description of the roles and responsibilities of federal,*
6 *state, and local agencies.*

7 *(e) A description of the purpose and limitations of the flood*
8 *control system.*

9 *(f) A description of all other relevant projects, programs, and*
10 *activities that, in the determination of the department or the*
11 *board, are a material component of the state plan of flood*
12 *control.*

13 *SEC. 7. Chapter 9 (commencing with Section 9110) is added*
14 *to Part 4 of Division 5 of the Water Code, to read:*

15
16 *CHAPTER 9. LOCAL REPORTS*

17
18 *Article 1. Definitions*

19
20 *9110. (a) "Fiscal year" shall have the same meaning as in*
21 *Section 13290 of the Government Code.*

22 *(b) "Levee failure inundation zone" means the area protected*
23 *by a federal levee as determined by the Central Valley Flood*
24 *Management Board.*

25
26 *Article 2. Flood Management Reports*

27
28 *9120. (a) On or before September 30 of each year, a local*
29 *agency responsible for the operation and maintenance of project*
30 *works shall prepare and submit to the board, in a format*
31 *specified by the board, a report of information for inclusion in*
32 *periodic flood management reports relating to the project. The*
33 *information submitted to the board shall include all of the*
34 *following:*

35 *(1) Information known to the local agency that is relevant to*
36 *the condition or performance of the project works.*

37 *(2) Information identifying known conditions that might*
38 *impair or compromise the level of flood protection provided by*
39 *the project works.*

1 (3) *A summary of the maintenance performed by the local*
2 *agency during the previous fiscal year.*

3 (4) *A statement of work and estimated cost for operation and*
4 *maintenance of project works for the current fiscal year, as*
5 *approved by the local agency.*

6 (5) *Any other information relevant to the condition or*
7 *performance of the project works, as determined by the board.*

8 (b) *A local agency that operates and maintains a nonproject*
9 *levee that also benefits land within the boundaries of the area*
10 *benefitted by the project shall include information pursuant to*
11 *subdivision (a) relating to the nonproject levee.*

12 (c) *A local agency that incurs costs for the maintenance or*
13 *improvement of a project or nonproject levee under the delta*
14 *levee maintenance subventions program established pursuant to*
15 *Part 9 (commencing with Section 12980), may submit*
16 *information submitted to satisfy the requirements of that program*
17 *to meet the requirements of paragraph (3) of subdivision (a), but*
18 *may do so only for that reach of the levee included in that*
19 *program.*

20 (d) *A local agency responsible for the operation and*
21 *maintenance of a flood control project not otherwise subject to*
22 *this section may voluntarily prepare and submit to the*
23 *department or the board a flood management report for posting*
24 *on the Internet Web site of the department or the board.*

25 (e) *As used in this section:*

26 (1) *“Local agency” means a local agency responsible for the*
27 *maintenance of project works.*

28 (2) *“Maintenance” means maintenance as defined in*
29 *subdivision (f) of Section 12878.*

30 (3) *“Project” means a facility of the state plan of flood*
31 *control, as defined in Section 8523.*

32 9121. (a) *Any county that includes a levee failure inundation*
33 *zone shall identify each parcel of real property located wholly or*
34 *in part in a levee failure inundation zone as that zone is*
35 *determined by the board pursuant to Section 9170.*

36 (b) *Any county that includes a levee failure inundation zone*
37 *shall provide a written notice of flood hazard with the annual*
38 *property tax assessment of each landowner determined by the*
39 *county to own a parcel of real property located in a levee failure*

1 inundation zone. The notice shall include statements regarding
2 all of the following:

3 (1) The property is located behind a levee.

4 (2) Levees reduce, but do not eliminate, the risk of flooding
5 and are subject to catastrophic failure.

6 (3) The level of flood risk as described in the flood control
7 system status report described in Section 9150, the approximate
8 maximum potential flood depth for each levee failure inundation
9 zone in the county, and a levee failure inundation zone map for
10 the county as prepared by the board in accordance with Section
11 9170.

12 (4) (A) The landowner is advised by the state to have flood
13 insurance for any buildings on the property to protect the owner
14 from loss.

15 (B) For the purpose of compliance with subparagraph (A), the
16 notice shall contain the following statement:

17 NOTICE OF LEVEE FAILURE INUNDATION ZONE

18 This property is located within an area identified by the
19 Central Valley Flood Management Board as a levee failure
20 inundation zone. Flooding due to the failure of a federal flood
21 protection levee may cause significant risk to life and property.
22 The State of California recommends that property owners in
23 levee failure inundation zones obtain flood insurance provided
24 by the Federal Emergency Management Agency through the
25 National Flood Insurance Program.

26 (5) Information about purchasing subsidized federal flood
27 insurance.

28 (6) The Internet address of the Web site of the board that
29 contains the information required by the flood management
30 report described in Section 9160.

31 (7) Any other information determined by the department to be
32 necessary.

33 (c) In preparing the annual written notice of flood hazard
34 required by this section, each county shall employ inundation
35 information and general descriptions developed by the board.

36 9122. A local agency responsible for the operation and
37 maintenance of a federal flood control facility of the facilities of
38 the state plan of flood control, as defined in Section 8523, may
39 propose an upgrade to any federal flood control facility, if the
40 local agency documents in its flood management report that the

1 *upgrade is appropriate. The local agency may implement that*
2 *upgrade if approved by the board.*

3 *SEC. 8. Chapter 10 (commencing with Section 9150) is added*
4 *to Part 4 of Division 5 of the Water Code, to read:*

5
6 CHAPTER 10. STATE REPORTS

7
8 Article 1. Flood Control System Status Report

9
10 9150. (a) *Before January 1, 2011, the department, in*
11 *cooperation with the board, shall prepare a flood control system*
12 *status report.*

13 (b) *The flood control system status report shall identify and*
14 *describe the facilities of the state flood control system, including*
15 *known deficiencies, using available information, and make*
16 *appropriate recommendations.*

17 (c) *The report shall be updated periodically, as necessary,*
18 *upon the appropriation of funds for that purpose.*

19
20 Article 2. Reports on Flood Management Activities by Local
21 Agencies

22
23 9160. (a) *The board shall prepare a report on flood*
24 *management for each local agency responsible for the operation*
25 *and maintenance of a federal flood control facility of the*
26 *facilities of the state plan of flood control, as defined by Section*
27 *8523, using information provided by the local agency pursuant to*
28 *Section 9120 and information from relevant portions of the*
29 *following documents, as determined by the board:*

30 (1) *Annual inspection reports on local agency maintenance*
31 *prepared by the department or board.*

32 (2) *The state plan of flood control described in Section 8725.*

33 (3) *The flood control system status report described in Section*
34 *9150.*

35 (4) *The schedule for mapping described in Section 8327.*

36 (5) *Any correspondence, document, or information deemed*
37 *relevant by the board.*

38 (b) *The board shall make the flood management report for*
39 *each local agency available on the Internet Web site of the board*
40 *and shall provide the report to all of the following entities:*

1 (1) *The department.*

2 (2) *The local agency.*

3 (3) *Any city or county within the local agency's jurisdiction.*

4 (4) *Any public library located within the local agency's*
5 *jurisdiction.*

6 (c) *The flood management report shall be updated annually*
7 *upon the appropriation of funds for that purpose.*

8 (d) *A flood management report voluntarily submitted by a*
9 *local agency pursuant to subdivision (d) of Section 9120 shall be*
10 *made available on the Internet Web site of the board if the local*
11 *agency has jurisdiction within the geographical boundaries of*
12 *the board's jurisdiction. Otherwise, the report shall be made*
13 *available on the Internet Web site of the department.*

14
15 *Article 3. Levee Failure Inundation Zone Maps*
16

17 9170. (a) *The board shall prepare, update, and maintain*
18 *maps for levee failure inundation zones, as defined in subdivision*
19 *(b) of Section 9110. The maps shall include flood depth contours*
20 *determined by the board.*

21 (b) *It is the intent of the Legislature that the levee failure*
22 *inundation zone maps be widely distributed to appropriate*
23 *government agencies, as determined by the board.*

24 SEC. 9. *If the Commission on State Mandates determines that*
25 *this act contains costs mandated by the state, reimbursement to*
26 *local agencies and school districts for those costs shall be made*
27 *pursuant to Part 7 (commencing with Section 17500) of Division*
28 *4 of Title 2 of the Government Code.*

29
30
31 **All matter omitted in this version of the bill**
32 **appears in the bill as amended in Senate,**
33 **June 28, 2005**
34